

Supreme Court of Florida

No. SC10-1471

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE.

[September 23, 2010]

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Criminal Procedure. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Criminal Procedure Rules Committee has filed a fast-track report in response to legislative changes.¹ Upon consideration of the committee's report and the relevant legislation, we adopt the amendments to rules 3.986 (Forms Related to Judgment and Sentence), 3.111(Providing Counsel to Indigents), 3.720 (Sentencing Hearing), and 3.704 (The Criminal Punishment Code) as proposed by the committee. Subdivisions (e) (Form for Order of Probation), and (f) (Order of

1. The Board of Governors of The Florida Bar, through its Executive Committee, voted unanimously (eleven to zero) in favor of the proposed amendments and in favor of filing the proposals out of cycle.

Community Control) of rule 3.986 are amended in response to chapter 2010-64, Laws of Florida, requiring that as a condition of probation and community control, offenders submit to the taking of a digitized photograph by the Department of Corrections as a part of the offender's records. Ch. 2010-64, §§ 18, 20, Laws of Fla. (effective July 1, 2010). Specific references to sections 948.03 and 948.101, Florida Statutes, are included because these statutes provide additional information concerning how the department may display these photographs and limitations upon its authority to do so.

Subdivision (c) (Forms for Charges, Costs, and Fees) of rule 3.986 and rules 3.111(b)(5)(A) and 3.720(d)(1) are amended to include references to court-appointed counsel, other than the public defender, within provisions pertaining to the imposition of liens for services rendered by court-appointed counsel. This is in response to the creation of the Office of Criminal Conflict and Civil Regional Counsel and the inclusion of that office in section 938.29, Florida Statutes (2009). See Chapter 2007-62, § 29, Laws of Fla. (effective October 1, 2007). Rules 3.111(b)(5)(A) and 3.720(d)(1) are also amended to correct the statutory reference to section 27.56, Florida Statutes, which has been renumbered as section 938.29, Florida Statutes (2009).

Finally, rule 3.704 (The Criminal Punishment Code) is amended in response to chapter 2007-212, Laws of Florida. That legislation revised part of the

worksheet key contained in section 921.0024(1)(b), Florida Statutes, pertaining to the law enforcement protection act multiplier. Ch. 2007-212, § 2, Laws of Fla. Subdivision (d)(20) of this rule is amended to correspond with the change in legislation.

Accordingly, the Florida Rules of Criminal Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. The amendments shall become effective immediately upon the release of this opinion. Further, interested persons shall have sixty days from the date of this opinion to file comments regarding the amendments with the Court.²

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

2. An original and nine paper copies of all comments must be filed with the Court on or before November 22, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Robert Strain, Capital Collateral Regional Counsel, 3801 Corporex Park Dr., Ste. 210, Tampa, FL 33619-1136, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until December 13, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

Original Proceeding – The Florida Rules of Criminal Procedure Committee

Robert T. Strain, Chair, Florida Rules of Criminal Procedure Committee, Capital Collateral Regional Counsel, Tampa, Florida, and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

APPENDIX

RULE 3.111. PROVIDING COUNSEL TO INDIGENTS

(a) [No change]

(b) **Cases Applicable.**

(1) – (4) [No change]

(5) Before appointing a public defender, the court shall:

(A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by the public defender counsel may be imposed ~~under section 27.56, Florida Statutes~~ as provided by law;

(B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath;

(C) require the accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.

(c) – (e) [No change]

Committee Notes [No change]

RULE 3.704. THE CRIMINAL PUNISHMENT CODE

(a) – (c) [No change]

(d) **General Rules and Definitions.**

(1) – (19) [No change]

(20) If the primary offense is a violation of the Law Enforcement Protection Act under subsection 775.0823(2), (3), or (4), Florida Statutes, the subtotal sentence points are multiplied by a factor of 2.5. If the primary offense is a violation of subsection 775.0823(3), (4), (5), (6), (7), ~~or (8)~~, or (9), the subtotal

sentence points are multiplied by a factor of 2.0. If the primary offense is a violation of section 784.07(3) or 775.0875(1) or the Law Enforcement Protection Act under subsection 775.0823(9) or (10) or (11), ~~or section 784.07(3), Florida Statutes, or section 775.0875(1)~~, the subtotal sentence points are multiplied by a factor of 1.5.

(21) – (30) [No change]

Committee Note
[No change]

RULE 3.720. SENTENCING HEARING

As soon as practicable after the determination of guilt and after the examination of any presentence reports, the sentencing court shall order a sentencing hearing. At the hearing:

(a) – (c) [No change]

(d) (1) If the accused was represented by a public defender or ~~special assistant public defender~~ other court appointed counsel, the court shall notify the accused of the imposition of a lien pursuant to section ~~27.56~~938.29, Florida Statutes. The amount of the lien shall be given and a judgment entered in that amount against the accused. Notice of the accused's right to a hearing to contest the amount of the lien shall be given at the time of sentence.

(2) If the accused requests a hearing to contest the amount of the lien, the court shall set a hearing date within 30 days of the date of sentencing.

Committee Notes
[No change]

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

(a) - (b) [No change]

(c) Form for Charges, Costs, and Fees.

In the Circuit Court,
___ Judicial Circuit, in
and for
_____ County, Florida
Division ___
Case Number ___

State of Florida

v.

Defendant

CHARGES/COSTS/FEES

The defendant is hereby ordered to pay the following sums if checked:

- ___ \$50.00 pursuant to section 938.03, Florida Statutes (Crimes Compensation Trust Fund).
- ___ \$3.00 as a court cost pursuant to section 938.01, Florida Statutes (Criminal Justice Trust Fund).
- ___ \$2.00 as a court cost pursuant to section 938.15, Florida Statutes (Criminal Justice Education by Municipalities and Counties).
- ___ A fine in the sum of \$___ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s).)
- ___ A sum of \$___ pursuant to section 938.27, Florida Statutes (Prosecution/Investigative Costs).
- ___ A sum of \$___ pursuant to section 938.29, Florida Statutes (Public Defender/Appointed Counsel Fees).
- ___ Restitution in accordance with attached order.
- ___ \$201 pursuant to section 938.08, Florida Statutes (Funding Programs in Domestic Violence).
- ___ A sum of \$___ for the cost of collecting the DNA sample required by s. 943.325, Florida Statutes.
- ___ Other _____

DONE AND ORDERED in open court in _____ County, Florida, on(date).....

Judge

(d) [No change]

(e) Form for Order of Probation.

In the _____ Court
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, _____, being now present before me, and you having

(check one)

___ entered a plea of guilty to

___ entered a plea of nolo contendere to

___ been found guilty by jury verdict of

___ been found guilty by the court trying the case without a jury of the offense(s) of _____

SECTION 1: Judgment Of Guilt

___ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be

___ committed to the Department of Corrections

___ confined in the County Jail

for a term of ___ with credit for ___ jail time. After you have served ___ of the term you shall be placed on probation for a period of ___ under the supervision of the Department of Corrections, subject to Florida law.

___ confined in the County Jail

for a term of ___ with credit for ___ jail time, as a special condition of probation.

It is further ordered that you shall comply with the following conditions of probation during the probationary period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$_____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay restitution, costs, and/or fees in accordance with the attached orders.
- (11) You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.

- (12) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.
- (13) You shall submit to the taking of a digitized photograph as required by s. 948.03, Florida Statutes.

SPECIAL CONDITIONS

- ___ You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you must successfully complete the treatment.
- ___ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- ___ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- ___ You will not associate with _____ during the period of probation.
- ___ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.
- ___ You will not contact _____ during the period of probation.
- ___ You will attend and successfully complete an approved batterers' intervention program.
- ___ Other _____
- _____

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your

probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Probationer _____

Instructed by _____

Original: Clerk of the Court
Certified Copies: Probationer
Florida Department of Corrections,
Probation and Parole Services

(f) Form for Community Control.

In the _____ Court
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF COMMUNITY CONTROL

This cause coming on this day to be heard before me, and you, the defendant, _____, being now present before me, and you having

(check one)

___ entered a plea of guilty to

___ entered a plea of nolo contendere to

___ been found guilty by jury verdict of

___ been found guilty by the court trying the case without a jury of the offense(s) of _____

SECTION 1: Judgment of Guilt

___ The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that you be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Community Control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be

___ committed to the Department of Corrections

___ confined in the County Jail

for a term of _____ with credit for _____ jail time. After you have served _____ of the term, you shall be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

___ confined in the County Jail

for a term of _____ with credit for _____ jail time, as a special condition of community control.

It is further ordered that you shall comply with the following conditions of community control during the community control period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$_____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own other weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your community control.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or your officer and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will report to your officer at least 4 times a week, or, if unemployed full time, daily.
- (11) You will perform _____ hours of public service work as directed by your officer.
- (12) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.
- (13) You will pay restitution, costs, and/or fees in accordance with the attached orders.
- (14) You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.

(15) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.

(16) You shall submit to the taking of a digitized photograph as required by s. 948.101, Florida Statutes.

SPECIAL CONDITIONS

___ You must undergo a (drug/alcohol) evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

___ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

___ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.

___ You will not associate with _____ during the period of community control.

___ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.

___ You will not contact _____ during the period of community control.

___ You will maintain an hourly accounting of all your activities on a daily log which you will submit to your officer on request.

___ You will participate in self-improvement programs as determined by the court or your officer.

___ You will submit to electronic monitoring of your whereabouts as required by the Florida Department of Corrections.

___ You will attend and successfully complete an approved batterers' intervention program.

___ Other _____

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence that it might have imposed before placing you on community control.

It is further ordered that when you have reported to your officer and have been instructed as to the conditions of community control, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office, and forthwith provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Community controller _____

Instructed by _____

Original: Clerk of the Court
Certified Copies: Community Controlee
Florida Department of Corrections,
Probation and Parole Services

(g) [No change]